



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Henry M. Wilder
County Attorney
Live Oak County
George West, Texas

Attention: Mr. R. E. Schneider, Jr.

Dear Sir:

Opinion No. 0-4516

Re: Does Article 666-33, Vernon's
Annotated Penal Code, require
that the same persons who have
been or may be designated as
officers to hold general elec-
tions must be appointed to hold
the local option election, or
does the act merely require that
the same number of judges, clerks,
etc., be appointed but that such
officers may be different persons
than those who have been or may
be designated to hold general
elections?

Your letter requesting the opinion of this depart-
ment on the above stated question reads in part as follows:

"The county judge of this county has request-
ed that I obtain from you an opinion of the con-
struction to be placed on the following portion
of Article 666-33 of the Penal Code, Acts 1935,
44th. Leg., 2nd C. S., p. 1795, Ch. 467, Art.
L-33.

"'-provided that said Court shall appoint
such officers to hold such elections as now re-
quired to hold general elections.'

"The question is does the act require that
the same persons who have been or may be desig-
nated as officers to hold general elections must

be appointed to hold the local option election, or, does the act merely require that the same number of judges, clerks, etc., be appointed but that such officers may be different persons that those who have been or may be designated to hold general elections.

"I have advised him that the act does not require that the same persons be appointed to hold a local option election as have been or may be designated to hold general elections, but that he may appoint different persons so long as he has the same number and class or character of officials, as required to hold general elections.

"To my mind the statute is clear and raises no question that the same persons need be appointed, if such had been the intention of the legislature it would have used language more appropriate to convey it's intention that the same persons should be appointed."

Article 666-32, Vernon's Annotated Penal Code, provides for the holding of local option elections to determine whether or not the sale of liquor shall be prohibited or legalized.

Article 666-33, Vernon's Annotated Penal Code, provides:

"Where the commissioners' court shall order an election as herein provided for, it shall be the duty of said court to order such election to be held at the voting place within such subdivision or county upon a day not less than ten (10) nor more than twenty (20) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the court with jurisdiction to make it valid, have been duly complied with, provided that said court shall appoint such officers to hold such election as now required to hold general elections."

Article 666-34, Vernon's Annotated Penal Code, provides that local option elections shall be held and the returns

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thereof made in conformity with the provisions of the general laws of the State, and by the election officers appointed and qualified under such laws; and Article 666-36, Vernon's Annotated Penal Code, provides that the holding of such elections by the officers shall conform to the general election laws in force regulating elections.

Vernon's Annotated Civil Statutes, Volume 9, Title 50, Chapter 3, sets out the qualifications of officers of elections and the manner of their appointment. Article 2937, Vernon's Annotated Civil Statutes, requires that in small precincts (having less than 100 votes) there shall be appointed by the commissioners' court, at the February term, two qualified judges to hold elections and the presiding judge shall appoint two competent and reputable voters to act as clerks of the election.

Article 2938, Vernon's Annotated Civil Statutes, provides that for a large precinct (having more than 100 votes) the commissioners' court shall appoint four judges to hold elections. This statute authorizes the presiding judge to appoint four competent and reputable clerks to assist said judges in holding the election.

Articles 2937 and 2938 are a part of the Terrell Election Law, which has been held not to effect or apply to special elections, but to be confined to general elections and primary elections (Chestnutt, et al., v. Wells, 280 S.W. 351; and authorities cited therein). Local option elections are special elections.

Therefore, in view of the foregoing, it is our opinion that Article 666-33, supra, merely requires that the same number, class and character of judges and clerks are to be appointed by the commissioners' court to hold local option elections as are required to hold general elections but does not require that the same persons who have been designated or appointed as officers to hold general elections must be appointed to hold local option elections.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

APPROVED APR 17, 1942

Robert R. Allen
FIRST ASSISTANT
ATTORNEY GENERAL

AW:db

APPROVE
OPINION
COMMITTEE
BY *BLW*
CHAIRMAN